

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MATTHEW SILVERMAN, and
AMANDA LISCHKE on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

MY FINANCIAL SOLUTIONS, LLC,
MIRABELLA GROUP, INC.
d/b/a FIVE MARKETING GROUP, and
ANGELA MIRABELLA,

Defendants.

Civil Action No.: 1:19-cv-10477-JGD

**DEFENDANTS' AGREED MOTION TO SET ASIDE CLERK'S ENTRY OF NOTICE
OF DEFAULT AND TO EXTEND THE TIME WITHIN WHICH TO FILE A
RESPONSE TO PLAINTIFFS' COMPLAINT AND PROPOSED ORDER**

Defendants, My Financial Solutions, LLC ("My Financial"), Mirabella Group, Inc. d/b/a Five Marketing Group ("Mirabella Group"), and Angela Mirabella (collectively, "Defendants"), by and through the undersigned attorneys and pursuant to Federal Rule of Civil Procedure 55(c), respectfully request that this Court enter an Order setting aside the Clerk's Notice of Default entered on June 12, 2019, and to extend the time for Defendants to file their Answer to the Complaint [D.E. 1] filed by Plaintiffs, Matthew Silverman ("Silverman") and Amanda Lischke ("Lischke") (collectively, "Plaintiffs") up to and including Monday, June 17, 2019. Plaintiffs do not oppose and agree to the relief requested by Defendants in the instant Motion. In support of this Motion, Defendants rely upon their contemporaneously-filed memorandum of law, and further state:

1. On March 14, 2019, Plaintiffs filed a Complaint against Defendants that they seek to have treated as a class action pursuant to the Telephone Consumer Protection Act, 47 U.S.C.

§ 227 *et seq.* (“TCPA”). Plaintiffs attempt to allege Defendants violated the TCPA by making calls to the cellular telephone numbers of Plaintiffs and other putative class members using an automatic telephone dialing system or artificial or prerecorded voice. Plaintiffs seek monetary damages and declaratory and injunctive relief for purported TCPA violations.

2. Defendants, through their former counsel, agreed to Plaintiffs’ request to waive service of summons in this action. Executed waivers of service were filed in this Court on April 1, 2019. *See* D.E. 6, 7, 8.

3. A response to the Complaint initially was due on May 15, 2019, but the Parties stipulated to a further extension of time for the response, through and including May 31, 2019. *See* D.E. 9. For reasons that are not entirely clear to Defendants, their former counsel did not file a response to Plaintiffs’ Complaint as anticipated.

4. On June 9, 2019, Plaintiffs requested entry of a Clerk’s Notice of Default. *See* D.E. 10. On June 12, 2019, the Clerk entered a Notice of Default against Defendants. At no time prior to receiving the Clerk’s Notice of Default did Defendants have any reason to believe that they were at risk of default.

5. Defendants immediately retained the undersigned attorneys as new counsel to defend them in this action.

6. The undersigned attorneys are taking prompt action to determine the events that led to the Clerk’s Notice of Default and to prepare a response to Plaintiffs’ Complaint so this case can be litigated and determined on its merits in this Court; particularly as there is a good faith basis for disputing Plaintiffs’ allegations and for bringing a meritorious defense against Plaintiffs’ claims.

7. Further, good cause, as contemplated under Fed. R. Civ. P. 55(c) (and as set forth in the accompanying memorandum of law), exists for setting aside the Clerk’s Notice of Default.

8. Accordingly, Defendants request that this Court enter an Order setting aside the Clerk's Notice of Default and allowing Defendants an opportunity to file a response to Plaintiffs' Complaint on or before June 17, 2019. The granting of such relief will not unfairly prejudice or unduly harm Plaintiffs.

9. The undersigned attorneys, as counsel for Defendants, contacted counsel for Plaintiffs the very night they learned of the Notice of Default and are authorized to represent that Plaintiffs agree and stipulate to the relief requested, so long as Defendants file an Answer to Plaintiffs' Complaint no later than June 17, 2019, which Defendants will do.

CONCLUSION

WHEREFORE, Defendants, My Financial Solutions, LLC, Mirabella Group, Inc. d/b/a Five Marketing Group, and Angela Mirabella, respectfully request this Court enter an Order to: (1) grant the instant Motion; (2) set aside the Clerk's Notice of Default [D.E. 11]; and (3) extend the time within which Defendants must file an Answer to Plaintiffs' Complaint to June 17, 2019, together with any such further or other relief in favor of Defendants this Court deems just and proper. A proposed Order reflecting the relief requested herein is attached for the Court's consideration.

Dated: June **13**, 2019.

Respectfully submitted,

By: /s/ Stephen D. Riden
Stephen D. Riden, BBO No. 644451
Hannah Joseph, BBO No. 688132
Email: sriden@beckreed.com
Email: hjoseph@beckreed.com
BECK REED RIDEN LLP
155 Federal Street, Suite 1302
Boston, Massachusetts 02110
Tel: 617-500-8672
Fax: 617-500-8665

-and-

BETH-ANN E. KRIMSKY

Fla. Bar No. 968412

Pro Hac Vice Anticipated

Email: beth-ann.krimsky@gmlaw.com

Email: clemencia.corzo@gmlaw.com

STEPHANIE VARELA

Fla. Bar No. 70989

Pro Hac Vice Anticipated

Email: stephanie.varela@gmlaw.com

Email: lauren.castaldi@gmlaw.com

GREENSPOON MARDER LLP

200 East Broward Blvd., Suite 1800

Fort Lauderdale, Florida 33301

Tel: (954) 527-6296

Fax: (954) 333-4027

*Attorneys for Defendants, My Financial
Solutions, LLC, Mirabella Group, Inc. d/b/a
Five Marketing Group, and Angela
Mirabella*

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

I hereby certify that, on June 13, 2019, counsel for Defendants conferred in good faith with counsel for Plaintiffs regarding the foregoing motion. Plaintiffs agree to the Court setting aside the default, provided that Defendants file a response to Plaintiffs' Complaint no later than Monday, June 17, 2019.

By: /s/ Stephen D. Riden
Stephen D. Riden

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 13, 2019.

By: /s/ Stephen D. Riden
Stephen D. Riden